

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	19cr286(AMD)
Plaintiff,	:	
-against-	:	United States Courthouse
ROBERT SYLVESTER KELLY,	:	Brooklyn, New York
Defendant.	:	Thursday, July 15, 2021
	:	1:00 p.m.
	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR CURCIO HEARING
BEFORE THE HONORABLE ANN M. DONNELLY
UNITED STATES DISTRICT JUDGE

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1 (In open court.)

2 (The Hon. Ann M. Donnelly, presiding.)

3 (Defendant present.)

4 THE COURTROOM DEPUTY: This is criminal cause for a
5 Curcio hearing, docket number 19-CR-286, *USA versus Robert*
6 *Kelly*.

7 Counsel state your appearance, Government first.

8 MS. MELENDEZ: Good afternoon, Your Honor. Maria
9 Cruz Melendez and Nadia Shihata.

10 MS. BLANK BECKER: Nichole Blank Becker on behalf of
11 Mr. Kelly seated to my left and seated to my right is attorney
12 Devereux Cannick and to my far left is attorney Tom Farinella.
13 Thank you, Judge.

14 THE COURT: Good afternoon.

15 MS. HARAMATI: Ilana Haramati, Curcio counsel.

16 THE COURT: Good afternoon.

17 MR. GREENBERG: Steve Greenberg and Mike Leonard on
18 the phone.

19 THE COURT: Thanks. And I think we have
20 Ms. Rodriguez also; is that correct?

21 MS. RODRIGUEZ: Yes, Your Honor, I am present in
22 your virtual courtroom.

23 THE COURT: Okay. I just want to be sure everybody
24 can hear. Just a quick outline of what we're going to do
25 today. Parenthetically, I did get Mr. Cannick's letter which

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1 I will address at the end of today's proceeding.

2 This is a continuation of the Curcio hearing that we
3 began I believe on the 17th. This is hearing is taking place
4 pursuant to the Court's obligation to investigate whenever,
5 quote, the spectre of attorney conflicts of interest arise.

6 In connection with today's proceeding, I have
7 reviewed all of the submissions that I have gotten, not just
8 since -- before June 17th, but also those that were submitted
9 after that hearing. I am just going to remind everyone that I
10 am not here to mediate disputes among the lawyers. I am not
11 interested in anything that does not relate to the discrete
12 issues of the extent to which it is -- and I think it's only
13 Ms. Becker at this point who may have a conflict.

14 I don't care when Mr. Greenberg met Ms. Rodriguez.
15 I have no interest in anything to do with that. I am only
16 interested in the extent to which there is a conflict because
17 Mr. Kelly has a right to have conflict-free representation and
18 if he's going to waive it, he is entitled to know what the
19 conflict is and have it explained to him.

20 As I said before, I appointed Ms. Haramati as Curcio
21 counsel and I thank her for her efforts in this regard to
22 advise Mr. Kelly about any potential conflicts and we will
23 talk about that in a bit.

24 Included in the submissions that I received were an
25 e-mail and some other materials from Ms. Rodriguez about this

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1 possible conflict of interest relating to the two witnesses.
2 I am going to remind counsel there is one witness that we are
3 referring to as Jane Doe No. 5. Do not use her name. She is
4 to be referred to as Jane Doe No. 5, but I do have some
5 questions for Ms. Rodriguez regarding some of the materials
6 that she submitted.

7 Some of the those questions will, in all likelihood,
8 implicate the attorney/client privilege, her representation of
9 these two witnesses, and for those portions that do involve
10 her attorney/client relationship with Jane Doe No. 5 and the
11 other witness, I will have a conversation with her ex parte.

12 Some of the inquiry that I have of Ms. Rodriguez I
13 think we can do in open court, but I am going to ask
14 Ms. Rodriguez to let me know the extent to which anything that
15 I am asking or that she wants to discuss implicates that
16 privilege. And I also want to make sure --

17 Ms. Rodriguez, you haven't been here before, but we
18 are referring to one of your clients as Jane Doe No. 5; okay?

19 MS. RODRIGUEZ: Yes, Your Honor.

20 THE COURT: And then I think we are referring to the
21 other witness by her name, Ms. Savage; is that correct?

22 MS. MELENDEZ: That's correct.

23 THE COURT: Is there anybody else that is to be
24 referred to as a Jane Doe?

25 MS. MELENDEZ: For the purposes of this discussion I

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1 believe that's it, Your Honor.

2 THE COURT: Okay. Ms. Rodriguez, I'm going to ask
3 you some of the questions that we can talk about in open court
4 and if these relate to subjects that will involve discussions
5 about privileged communication, let me know, okay?

6 MS. RODRIGUEZ: Okay.

7 THE COURT: When were you retained by Jane Doe No. 5
8 and Joycelyn Savage?

9 MS. RODRIGUEZ: I was retained by them in July of
10 2019.

11 THE COURT: And for how long?

12 MS. RODRIGUEZ: And the exact date -- I'm sorry. I
13 was looking for the exact date, but it was very early July
14 2019.

15 THE COURT: Okay. And for how long did you
16 represent them?

17 MS. RODRIGUEZ: I represented them jointly until
18 about September 1 of 2019.

19 THE COURT: When did you first come into contact
20 with Ms. Becker?

21 MS. RODRIGUEZ: I first met Ms. Becker in person at
22 the bond hearing that was at the Dirksen Center in July 2019.

23 THE COURT: At the what center?

24 MS. RODRIGUEZ: The Federal Building in Chicago.
25 It's called the Dirksen building.

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1 THE COURT: Dirksen, okay. And was that in
2 connection with your representation of these two women?

3 MS. RODRIGUEZ: It was because -- yes, I would say
4 yes.

5 THE COURT: And at the point that you met
6 Ms. Becker, were you representing Jane Doe No. 5 and
7 Ms. Savage the first time you met her?

8 MS. RODRIGUEZ: Yes.

9 THE COURT: Did you ever give Ms. Becker any
10 instructions regarding her interactions with those witnesses?

11 MS. RODRIGUEZ: Yes.

12 THE COURT: And what were your instructions?

13 MS. RODRIGUEZ: I had asked her to please not
14 contact my clients without my knowledge.

15 THE COURT: And what form --

16 MS. RODRIGUEZ: And I also --

17 THE COURT: Go ahead. I am sorry.

18 MS. RODRIGUEZ: I'm sorry. I know there is a delay
19 so I am trying to speak slowly so you can all hear me.

20 THE COURT: That's fine. That's fine.

21 MS. RODRIGUEZ: The second one was to please not
22 give them any advice about things that might pertain to the
23 case or their interests.

24 THE COURT: And in what form did those -- what form
25 did those instructions take?

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1 MS. RODRIGUEZ: The form was through text message
2 and through e-mail and through in-person.

3 THE COURT: And do you know approximately when you
4 gave these various instructions?

5 MS. RODRIGUEZ: Yes -- and actually on the phone. I
6 spoke to her on the phone. So, on July 15th, I sent her a
7 text message with my e-mail address and called her and we had
8 a very lovely conversation. And I communicated to her.

9 THE COURT: What did you say?

10 MS. RODRIGUEZ: I said specifically I don't want the
11 lines to be blurred regarding our roles and I think they are
12 already blurred. If you could please not contact them at all
13 without my knowledge.

14 THE COURT: Did you text it to -- sorry. Let me
15 finish the question. I know we have a little bit of a delay.
16 Did you text that? Did you e-mail it? Did you say it in
17 person? Did you do all three of those things?

18 MS. RODRIGUEZ: Yes. The text message was sent on
19 July 15, 2019 at 5:15 p.m. Then the phone call with Ms. Becker
20 was later that day and we spoke for about 45 minutes. Then I
21 saw her on July 16th in person. I met her about 1:00 right
22 before the hearing and we discussed it and it was very
23 pleasant. She seemed to have understood what I was asking her
24 to do.

25 THE COURT: You said she seemed to understand when

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1 you met in person. Did you receive any response to the text
2 message that you sent on July 15th?

3 MS. RODRIGUEZ: No.

4 THE COURT: And is there a way to tell when you send
5 a text message whether or not the person has received it?

6 MS. RODRIGUEZ: Not through the technology that I
7 had at the time.

8 THE COURT: For example, would your phone tell you
9 if a message did not go through?

10 MS. RODRIGUEZ: No, it wouldn't, but I saved the
11 text message on my device which I still have and I have it in
12 my hand.

13 THE COURT: Okay. I think it may be included in
14 some of the materials that I received. And so you still have
15 it on the phone; is that correct?

16 MS. RODRIGUEZ: Yes.

17 THE COURT: So sometimes when people send text
18 messages and it doesn't go through, you get an alert that
19 tells you that it didn't go through. Does your phone do that?

20 MS. RODRIGUEZ: Yes, it does.

21 THE COURT: Did it do it at the time that you sent
22 these text messages in -- is it 2019?

23 MS. RODRIGUEZ: Correct, 2019. It did not -- I'm
24 sure she received it because we spoke after that text message.

25 THE COURT: What specifically did she said that led

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1 you to the conclusion that she got the text message?

2 MS. RODRIGUEZ: On the phone I remember her saying,
3 Gloria, I'm glad they retained you. I'm glad they retained an
4 attorney. I'm Mr. Kelly's attorney, whatever you need -- the
5 lines are drawn and I'm not going to step on your toes and she
6 made it known that there was a clear understanding of my
7 concern.

8 THE COURT: So this was July 16th --

9 MS. RODRIGUEZ: July 15th, the phone call, and the
10 text was July 15th.

11 THE COURT: And you met her in person on the 16th
12 when you had this conversation; correct?

13 MS. RODRIGUEZ: Correct. I actually met her and
14 Mr. Greenberg in person for the first time July 16th.

15 THE COURT: Following those contacts on the 15th and
16 the 16th -- did you also say that you sent an e-mail?

17 MS. RODRIGUEZ: In my notes I saw that I put an
18 e-mail there, but I don't think that my office maintained a
19 record of that. So I don't independently remember sending an
20 e-mail. I had a little note here that said I sent an e-mail,
21 but I don't actually have the e-mail.

22 THE COURT: Okay. Now, following these
23 conversations, did you learn at some point that Ms. Becker was
24 contacting either or both of these women without letting you
25 know?

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1 MS. RODRIGUEZ: Yes.

2 THE COURT: How did that happen?

3 MS. RODRIGUEZ: Well, Jane Doe No. 5 was kind of the
4 point of contact for Ms. Savage and it was obvious to me that
5 despite the lovely conversation that I had with Ms. Becker
6 that Ms. Becker was still relaying to them information about
7 Mr. Kelly's case and giving them what I believed was legal
8 information, which was contradictory to what I was advising
9 them on.

10 THE COURT: All right. Go ahead, sorry.

11 MS. RODRIGUEZ: And I can give you -- sure.
12 Specifically there was an issue about what to do with the
13 media and I remember asking them where are you coming with
14 this and their reply was, Ms. Becker said, and then -- I
15 was -- I have no doubt in my mind that Ms. Becker was
16 continuing to speak to my clients, number one, without my
17 knowledge; and, number two, relaying information that was of a
18 material nature in response to their legal interests.

19 THE COURT: Now, I want to find out what the
20 specifics of that information was, but I am -- it sounds to me
21 like it would require you to divulge conversations that you
22 had with your clients that are privileged. Is there anything
23 you can tell us --

24 MS. RODRIGUEZ: That's correct, Your Honor.

25 THE COURT: Is there anything you can tell us about

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1 that that is not privileged? If you can't, that's fine. We
2 can --

3 MS. RODRIGUEZ: Yes. The -- the breakdown of my
4 relationship with both of my clients, I believe, was led -- or
5 I believe was encouraged by them still receiving information
6 that was contrary to my advice for them and when I formally
7 severed the relationship, I received instruction in a letter
8 from my clients, signed by both of them, seeking to turn my
9 file over to their new attorney. The new attorney was not
10 named in the letter, but when I spoke to Jane Doe No. 5 and
11 asked her where she wanted me to send it to, she gave me
12 Ms. Becker's contact information. And then I had a discussion
13 with her about that and how I felt that it was concerning to
14 me that she would be representing them.

15 THE COURT: Is there anything else that you can tell
16 us. You put quite a bit of information into your submissions.

17 Is there anything else that you can tell us that's
18 not privileged that's relevant to this inquiry?

19 MS. RODRIGUEZ: I believe that would be it as far as
20 what is not privileged.

21 THE COURT: I think that at this point we will
22 recess so that the Court can do an inquiry ex parte on the
23 topics that have to do with the attorney/client privilege. I
24 don't think that will take all that long, but I am going to
25 leave the courtroom to do that and we will be in recess until

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1 we are finished with that.

2 (Pause in proceedings.)

3 THE COURT: Ms. Rodriguez, can you hear us?

4 MS. RODRIGUEZ: Yes, Your Honor, I can.

5 THE COURT: I spoke with Ms. Rodriguez about the
6 communications that implicated the attorney/client privilege.
7 There was one item or one incident that the witness described
8 that I think is appropriate. It does not implicate the
9 attorney/client privilege.

10 So I am just going to ask the witness to describe
11 the conversation -- prior to the Court speaking with the
12 witness ex parte, the witness described a conversation that
13 she had with Ms. Becker on the 16th of July. I think that was
14 the date. Following that conversation the witness, during the
15 ex parte part of the inquiry --

16 You talked about a conversation that you had with
17 Mr. Greenberg regarding your concerns about Ms. Becker. Can
18 you describe that conversation?

19 MS. RODRIGUEZ: Yes, Your Honor. About a couple of
20 weeks after the federal bond hearing in Mr. Kelly's case in
21 Chicago, I had spoken with Mr. Greenberg about a different
22 issue on the phone and it was a very brief conversation that
23 I'm sure Mr. Greenberg may not remember, but in the
24 conversation towards the end of this conversation I had
25 mentioned to him if he could please talk to Ms. Becker to,

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1 quote, rein her in. And the response that Mr. Greenberg
2 said -- it was something to the effect of, good luck with
3 that.

4 THE COURT: When you say "rein her in," I just want
5 to be sure -- what do you mean; rein her in regarding what?

6 MS. RODRIGUEZ: Rein her in in respect to not
7 communicating with my clients without my knowledge.

8 THE COURT: Okay?

9 MS. RODRIGUEZ: It was apparent to me that
10 Ms. Becker continued speaking with them regularly and that my
11 communications with Ms. Becker to please stop went unheeded.
12 So I took my concern to Mr. Greenberg since I knew at the time
13 Ms. Becker was on Mr. Kelly's legal team to ask him to please
14 rein her in from continuing that behavior and he had said
15 something to the effect of good luck with that.

16 THE COURT: Okay. I don't have any further
17 questions for the witness.

18 Let me start with the Government, are there any
19 additional questions that you want to put to the witness or
20 you want me to put to the witness to complete the record on
21 this issue?

22 MS. CRUZ MELENDEZ: No, Your Honor.

23 THE COURT: And how about from Mr. Kelly's side; any
24 questions to put to the witness regarding the issues that I am
25 interested in? I will put the question, but you tell me what

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1 the question is.

2 MS. BLANK BECKER: I actually just have things that
3 I would like to address to the Court. They're not specific
4 questions to Ms. Rodriguez. Thank you.

5 THE COURT: All right, I think it's probably okay --
6 is it okay to let the witness go?

7 MS. CRUZ MELENDEZ: The Government has no objection
8 to that.

9 THE COURT: All right. I want to be sure that
10 Curcio counsel -- is there anything that you need to hear from
11 her?

12 MS. HARAMATI: No, Your Honor.

13 THE COURT: And nothing else from Mr. Kelly's side
14 that we need to put to the witness?

15 MS. BLANK BECKER: No, Judge. Thank you.

16 THE COURT: Thank you very much, Ms. Rodriguez. You
17 are free to go?

18 MS. RODRIGUEZ: Great. Thank you, Your Honor.

19 THE COURT: Okay. Now I will hear from the parties.
20 If there's anything additional, any additional things they
21 want me to look at, anything else that they want me to say.

22 I don't know, Ms. Becker, if in the time since that
23 conference in June you have had a chance to refresh your
24 recollection about the matters at issue in this hearing or if
25 there's anything that you want to say, bearing in mind that

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1 the focus of the hearing is Mr. Kelly's right to conflict-free
2 counsel.

3 As difficult as these inquiries are, it's not about,
4 unless it's a factual question about -- it's not about you, in
5 other words. It's about whether there is a conflict and I
6 will repeat; it's also not about whatever disputes and
7 disagreements that you have with Mr. Leonard and
8 Mr. Greenberg.

9 Keeping that in mind, is there something specific
10 that you have to add?

11 MS. BLANK BECKER: Thank you, Judge. Judge and I
12 don't mean to belabor the point, but I think it's appropriate
13 for me to make a record as well and just forward my thoughts.

14 Judge, I did have a chance to look at the messages
15 that were sent on the piece of paper that was given to us from
16 Ms. Rodriguez. Obviously it does show that she attempted
17 and/or did, apparently -- she can't even tell us --

18 THE COURT: Did you get it?

19 MS. BLANK BECKER: Yes, yes.

20 THE COURT: But did you get it when it was sent?
21 That's the question.

22 MS. BLANK BECKER: Judge, unfortunately I have zero
23 recollection of seeing it. It doesn't mean I didn't get it.
24 It just means I have zero recollection of seeing this.

25 THE COURT: Okay.

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1 MS. BLANK BECKER: Thank you. Additionally, Judge,
2 what I provided for the Court since I had an opportunity to
3 now review the materials that I had specifically pertaining to
4 Ms. Rodriguez and/or my communications with the girls --

5 THE COURT: The women.

6 MS. BLANK BECKER: I'm sorry.

7 THE COURT: They are women. They are adult women.

8 MS. BLANK BECKER: The women. You are correct,
9 Judge. I apologize. Judge, my -- my research based on the
10 text messages that I was able to look through, Judge, and I
11 supplied this to the Court, simply show that on July 13th,
12 Jane Doe No. 5 sent me a text message indicating that she
13 hired a spokesperson and that spokesperson was Ms. Gloria
14 Rodriguez. So I was made aware of that on the 13th.

15 And then on that particular day I also had some
16 conversations -- text message conversations with Mr. Greenberg
17 and when I had conversations with Mr. Greenberg, he was asking
18 me if I would ask the girls if they were coming to court that
19 day.

20 THE COURT: I am just going to stop you.

21 MS. BLANK BECKER: Sorry.

22 THE COURT: I am -- it is 2021. We are talking
23 about women in their 20s. They are not girls. Please do not
24 refer to them that way.

25 MS. BLANK BECKER: I apologize, Judge. It's been

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1 two years.

2 THE COURT: They were women then, too. Go ahead.

3 MS. BLANK BECKER: The discussion was about the
4 woman and in that text message he had wanted me to contact
5 them and specifically I indicated to Mr. Greenberg, and this
6 is in the text message: They said they are having Gloria
7 Schmidt be their spokesperson. Apparently she told them she
8 had lunch with you the other day, so this would have been
9 prior to July 13th. I am sure they would like to come to the
10 hearing. Do you think they should, and what time. And his
11 response, Judge, was: People talk too much. We had a meeting
12 in a secret location so nobody would know.

13 THE COURT: What does this have to do with your
14 communications with these two represented witnesses?

15 MS. BLANK BECKER: It does, Judge, because if I
16 could finish that sentence --

17 THE COURT: I read it. You submitted it so there's
18 no reason to keep reading it.

19 MS. BLANK BECKER: Just for the record.

20 THE COURT: It's on the record.

21 MS. BLANK BECKER: So, Judge, Mr. Greenberg told me
22 that she couldn't represent the women. Okay. So although I
23 knew on my own from conversations with Ms. Rodriguez that she
24 was going to represent them --

25 THE COURT: But that is -- I am sorry to sound

1 impatient, but the question is whether you knew and you said
2 the last time that you did know that she represented them. So
3 that's why I am not really interested --

4 Mr. Greenberg wants to get off the case. If he were
5 on the case I would ask him these questions, but my intention
6 is to excuse them. So that's why I am not really -- that is
7 why I am trying to explain it to you. Maybe there is a forum
8 for you all to hash out your complaints about one another. It
9 is not here. I don't want to know about it, A, because I
10 think it's a waste of time; and, B, it's not a focus of what
11 I'm focusing on, which is your client's right to conflict-free
12 representation.

13 I think if we keep our eye on the ball of what
14 Mr. Kelly's interests are and not what our own personal
15 interests are, we can accomplish that objective. Maybe
16 there's a place for you all to argue about what Mr. Greenberg
17 said or what someone else said, but I think it's clear that
18 you were aware at the time that Ms. Rodriguez was representing
19 these two women; correct so far?

20 MS. BLANK BECKER: That is correct, Judge.

21 THE COURT: And I think the last time we also
22 established that you were aware also of the rule that a lawyer
23 should not speak to represented people.

24 MS. BLANK BECKER: That's correct, Judge, and that's
25 why I'm trying to make this record, Judge.

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1 THE COURT: But whatever Mr. Greenberg said isn't
2 part of the record. I am encouraging you to focus on these
3 things. That's my question.

4 My question is, in your review of your materials is
5 there anything that you want to add about your interactions
6 with these two represented women in connection with this case?

7 MS. BLANK BECKER: Yes, Judge. With all due
8 respect, I do understand exactly what you're saying. So,
9 thank you, Judge. The reason I brought this up is simply
10 because even though I -- strike that.

11 I knew that they were represented. Therefore, the
12 same exact day when they text me, I supplied the Court with
13 texts that I responded and I said, Ask Gloria. That was on
14 July 13th. There was a number of texts between July 13th and
15 July 16th that I did not respond to and on the 16th I texted
16 them back, Ask Gloria. And ultimately, Judge, the very next
17 day, the 16th, that's when the women sent me an article which
18 I produced for the Court as well, and they indicated that in
19 their text message that as a result of that article that was
20 on a social media outlet, that they did not want her as their
21 lawyer anymore.

22 THE COURT: They told you this?

23 MS. BLANK BECKER: In a text message, Judge, yes,
24 yes. And that was the following day after Mr. Kelly's
25 hearing.

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1 THE COURT: So, is it your position that you thought
2 at that time she was no longer representing them?

3 MS. BLANK BECKER: I actually still thought she was
4 doing the media stuff with them, yes, I actually did, but they
5 accidentally -- and I think I brought this up last time and
6 it's in the text message as well, they accidentally ended up
7 sending me the termination letter. And, so, I had a chance to
8 read it because at first I didn't know what it was, but it
9 started saying, Hey, Gloria --

10 THE COURT: I know what it says. It's in the
11 record. And we talked about that the last time.

12 But it is the case that -- and, you know, you
13 continued to have significant contacts with them and
14 conversations during this period; is that true?

15 MS. BLANK BECKER: Judge, I had no significant
16 conversations. Did I answer if they would say, what day is
17 court or something to that effect, yes. Did I have
18 significant conversation as has been indicated somewhat by
19 Ms. Rodriguez about legal stuff, never.

20 THE COURT: Did you have conversations with them
21 about anything having to do with the case?

22 MS. BLANK BECKER: Yes, I would give them what date
23 if they would ask, Judge. I believe at one point they asked
24 if he needed clothing, a suit, for court. I responded to
25 that. There were several things of that nature that I did

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1 respond to, yes, Judge.

2 THE COURT: Did you talk to them about their
3 relationship with Ms. Rodriguez? Did they share with you
4 their thoughts about that?

5 MS. BLANK BECKER: Judge, the only thing I recall
6 them talking about is the message when the article came out
7 that they want to terminate her. That's what I recall.

8 THE COURT: Okay. Is there anything that you want
9 to put on the record? I'm not trying to keep you from putting
10 anything on the record except to the extent that it has to do
11 with a personal dispute between you and the lawyers. I'm not
12 interested in that unless it somehow connects to this issue,
13 but I don't think it does.

14 MS. BLANK BECKER: Judge, I was simply trying to put
15 a full picture as to what my understanding was and other than
16 that, Judge, I do not have anything additional. Thank you.

17 THE COURT: Okay. What about does any co-counsel
18 have anything they want to say on this topic?

19 Mr. Farinella.

20 MR. FARINELLA: No.

21 THE COURT: Mr. Cannick?

22 MR. CANNICK: No, Your Honor.

23 THE COURT: From the Government?

24 MS. CRUZ MELENDEZ: Very briefly and I believe we
25 spoke about this last time. When the Government spoke with

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1 Jane Doe No. 5, she did detail a meeting in approximately
2 August of 2019 in which she had a lengthy conversation with
3 Ms. Blank Becker. During that conversation I believe there
4 were questions concerning her relationship or their
5 relationship with the defendant and information that Ms. Blank
6 Becker thought might be useful for the purposes of Mr. Kelly's
7 defense, some of which information, as we stated in our
8 filing, could be perceived and I think frankly would be
9 perceived, adverse to the defendant's position at trial.

10 THE COURT: I want to be sure I understand what
11 you're saying. The information that these -- that the
12 witnesses gave to Ms. Becker, you are saying would be --

13 MS. CRUZ MELENDEZ: Adverse to the defendant's
14 position at trial. And I only raise it for the purposes of
15 making it clear that to the extent that your question was did
16 Ms. Blank Becker have any lengthy conversations with the
17 witnesses, my understanding, based on conversations with Jane
18 Doe No. 5, is that there was at least that meeting in
19 approximately August of 2019.

20 THE COURT: Do you recall that meeting, having a
21 conversation with them in an interview -- is it just Jane Doe
22 No. 5?

23 MS. CRUZ MELENDEZ: I believe Ms. Savage was present
24 as well.

25 MS. BLANK BECKER: Judge, I cannot honestly recall.

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1 Did I have conversations with them, yes. Did I know about
2 their history with my client? For a long time they were not
3 represented by anybody, so I certainly did have conversations
4 with them about their relationship kind of, I would say, but I
5 certainly cannot specifically remember a conversation in
6 August of 2019 where we talked about any specifics or that I
7 gave them any advice adverse to Mr. Kelly.

8 THE COURT: I do not think that that's what Ms. Cruz
9 Melendez is saying. I think what Ms. Cruz Melendez is saying
10 is that during the course of that conversation, Jane Doe No. 5
11 gave you information that was not helpful to your client.

12 MS. CRUZ MELENDEZ: If it's helpful, I can point
13 both the Court and counsel to where we indicated in our
14 letter. I will find that.

15 THE COURT: Is that the letter of June 24th?

16 MS. CRUZ MELENDEZ: The June 24th letter, Your
17 Honor. Your Honor it's page three, the first full paragraph.

18 MS. BLANK BECKER: Judge, may we approach if that's
19 appropriate?

20 THE COURT: I do not really see any need to approach
21 at this point. We're just talking about this paragraph. I
22 take it you received that letter; correct?

23 MS. BLANK BECKER: I received all the letters that
24 were on the PACER, yes, Judge, of course.

25 THE COURT: You're doing that to alert Ms. Blank

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1 Becker of what you're talking about?

2 MS. CRUZ MELENDEZ: That is a correct.

3 THE COURT: All right. My recollection was that you
4 said you met them, Jane Doe No. 5 and Ms. Savage, at the -- I
5 think it was at the hearing after Mr. Kelly's arrest on the
6 Illinois federal charge; is that correct? That was my
7 recollection of the testimony or maybe you had talked to them
8 on FaceTime or something before then.

9 MS. BLANK BECKER: Judge, do I recall that they were
10 at Dunkin' Donuts one day. They were dropped off there prior
11 to court and --

12 THE COURT: I am talking the first time you met
13 them.

14 MS. BLANK BECKER: I'm sorry, the very first time,
15 yes, Judge, it was -- I had a FaceTime call with my client
16 months into representing him and he had turned the phone and I
17 had said hello to them, yes.

18 THE COURT: So you had never had any interaction
19 with them before; correct?

20 MS. BLANK BECKER: Yes.

21 THE COURT: And prior to them being represented by
22 Ms. Rodriguez, you hadn't had any -- did you give them any
23 advice whatsoever?

24 MS. BLANK BECKER: Judge, the first time I was
25 contacted, I believe I supplied that to the Court as well,

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1 was -- I have to look, but I believe it was July 12 or 13 by
2 Jane Doe No. 5.

3 THE COURT: And so prior to that, you had never --
4 during the course of your representation of Mr. Kelly, you
5 hadn't had any interaction with them at all in the nature of
6 legal or any advice -- just bearing in mind that I think it's
7 not just -- even if it's how to deal with the media, that is
8 something that is also under the umbrella of legal advice
9 because of somebody's interest in how they're perceived
10 publicly, so I am referring to that as well. Nothing else?

11 MS. BLANK BECKER: Judge, I may have seen them in
12 court prior to that, but me personally interacting with them,
13 that is correct.

14 THE COURT: Is there anything else the Government
15 wanted to add?

16 MS. CRUZ MELENDEZ: Not with respect to this issue,
17 Your Honor.

18 THE COURT: And anything else from the defense?

19 MS. BLANK BECKER: No, Judge.

20 THE COURT: Ms. Haramati anything from you?

21 MS. HARAMATI: No, Your Honor.

22 THE COURT: Let me ask Ms. Haramati, do you need to
23 talk to Mr. Kelly any further?

24 There is one thing that I want to place on the
25 record that is based on my interview with -- my conversation

1 with Ms. Rodriguez, and after that I want you to tell me if
2 there's some additional conversation that you want to have
3 with him. Obviously I'm not going to relay the specifics
4 because they are protected by the attorney/client privilege,
5 but during the inquiry Ms. Rodriguez related certain instances
6 where she -- where Ms. Becker gave Ms. Rodriguez's clients
7 advice and advice that conflicted with the advice that
8 Ms. Rodriguez had given her clients and, as I said before,
9 even if the discussion is about public image or media or
10 anything of that kind, that is also contained in the
11 definition of legal advice.

12 There could be two questions here, it could be that
13 if this -- if this advice were given, it's just what
14 Ms. Becker thought was good advice, but she also represents
15 Mr. Kelly and a reasonable person could conclude that she was
16 gaining their confidence and giving them advice that was
17 designed to help Mr. Kelly, not necessarily them.

18 Now, I am saying that this is what a reasonable
19 person could conclude and I think it is in the record that
20 the, at least from Ms. Rodriguez's perspective, I believe this
21 is -- let me just check with my law clerk.

22 (Pause in proceedings.)

23 THE COURT: When the relationship was ended, they
24 told her to send their file to Ms. Becker, so clearly there
25 was -- there were conversations going on and it's a situation

1 where -- where when you are representing one person and you
2 want to find out what the witnesses have to say, that's fine,
3 but when they are represented, that poses an ethical conflict
4 and not all ethical conflicts require this sort of inquiry or
5 certainly that counsel be taken off the case.

6 But in this instance, there is a plausible
7 accusation of violating the code, whether or not that actually
8 happens, that can create its own pressures on a lawyer to
9 refute that violation, to refute that accusation.

10 So, I just want to make sure with Ms. Haramati, I
11 know this is sort of a related issue to some of the other
12 issues that have come up, but do you need any additional time
13 to discuss this particular feature of this with Mr. Kelly?

14 MS. HARAMATI: Your Honor, we discussed similar
15 issues. I would appreciate if I could speak to Mr. Kelly for
16 a moment before answering the Court whether I need --

17 THE COURT: Why don't we do that. So you don't have
18 to do that with us all watching here, what the best way to do
19 that? To take him in the back? Okay, let's do that.

20 We'll be in recess for just a minute.

21 MS. HARAMATI: Thank you, Your Honor.

22 (Recess taken.)

23 THE COURT: Of all, I know it's cold in here. It's
24 either freezing or you're on fire so there is not a whole lot
25 we can do about it. In my experience it is better to be cold

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1 than hot. Anyway, I am sure it will be hot on another day but
2 that's just the way it is.

3 Let me ask Ms. Haramati, have you had enough time to
4 discuss with Mr. Kelly not just the conflicts that were
5 identified or potential conflicts that were identified in the
6 submissions, but I guess I will say a somewhat different but
7 related one that came up today.

8 MS. HARAMATI: Yes, Your Honor. Just with this
9 additional time we were able to discuss it sufficiently.

10 THE COURT: I see. And have you discussed all of
11 those issues that were raised in the letter?

12 MS. HARAMATI: We spent time discussing all the four
13 other issues that were raised in the Government's -- I think
14 the June 14th letter.

15 THE COURT: In your view, does he understand what
16 those conflicts are?

17 MS. HARAMATI: Yes, Your Honor.

18 THE COURT: Is he capable of waiving those?

19 MS. HARAMATI: Yes.

20 MS. CRUZ MELENDEZ: Your Honor?

21 THE COURT: Go ahead.

22 MS. CRUZ MELENDEZ: Before Your Honor begins the
23 inquiry, as Your Honor pointed out the Government mentioned
24 additional potential conflicts in its submissions and we would
25 ask that to the extent Your Honor has a concern with respect

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1 to doing a more-detailed inquiry for the purpose of not
2 discussing sealed information, the Court would consider, so
3 that the record is clear and in an abundance of caution, doing
4 the inquiry with respect to those other issues via sidebar or
5 some other method for the purposes of making sure that the --
6 and for the -- as well as the interest of the defendant and
7 the interest of the Government to make sure that the record is
8 as clear as possible.

9 THE COURT: I mean, I can do that, but Mr. Kelly is
10 sitting over at the table so I'm not quite sure how that would
11 work. You want him walked over here and ask him over there?

12 MS. CRUZ MELENDEZ: If that's possible, Your Honor.

13 THE COURT: I think that when we first met, I
14 mentioned that there were things in there that I think that
15 the Government also agrees are -- there's not a sufficient
16 basis to conclude that they actually happened, but the concern
17 is that anybody -- that a lawyer might be concerned about
18 making sure that this didn't get out or something like that.
19 I can't think of the name of the case but it's akin to a
20 lawyer who --

21 MS. CRUZ MELENDEZ: *Fulton*.

22 THE COURT: Right, *Fulton*. The lawyer was accused
23 of something that's not true but the lawyer may have an
24 interest in defending herself or himself from that accusation.
25 I think we can do that without identifying things that are --

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1 that we don't think there's any basis for. I don't think
2 that's necessary as long as we're making reference to, and you
3 can point me to the paragraphs in the letter and I can even
4 have Curcio counsel show that to Mr. Kelly because I know they
5 have discussed it and just --

6 And Curcio counsel has also advised that she's gone
7 over all of these things with him. I am just going to, for a
8 belt and suspenders, I'm assuming that as part of that
9 conversation that you advised Mr. Kelly that the question
10 isn't whether certain accusations are true or untrue.

11 One of the possible issues is if there's something,
12 an accusation, out there the concern is that the lawyer's
13 interest will be in defending himself or herself from the
14 accusation regardless of whether it's true.

15 MS. HARAMATI: Yes, we discussed that.

16 THE COURT: Does that sound sufficient?

17 MS. CRUZ MELENDEZ: Your Honor, if the Government
18 has an opportunity to hear the inquiry and then perhaps have
19 an opportunity to be heard afterwards, we'd appreciate it.

20 THE COURT: You will let me know. So let's get
21 Mr. Kelly the -- I think if counsel can give him the
22 microphone.

23 Mr. Kelly, just make sure it's on. You are
24 vaccinated?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: So you can pull it over towards you.

2 THE DEFENDANT: Thank you.

3 MS. CRUZ MELENDEZ: Your Honor, if I could note one
4 thing that may make this move a little more smoothly as you
5 begin the inquiry. As defense counsel noted, Mr. Kelly has
6 some reading limitations and so to the extent Your Honor
7 references something in the filing, we would just ask that
8 Ms. Haramati have an opportunity to speak quietly to the
9 defendant so that it's perfectly clear.

10 THE COURT: So, based on what I've reviewed,
11 Mr. Kelly, I have determined that Ms. Becker has potential
12 conflicts of interest in representing you. I have also
13 determined that you can waive those conflicts if you are
14 informed about what they are and if you consent you can
15 continue to have her represent you.

16 The conflict, the potential conflicts, arise -- one
17 of them is because of the evidence that Ms. Becker had
18 substantial contacts with potential witnesses and may have
19 developed a relationship of trust with them even though she
20 were never formally retained as their lawyer she has
21 confidentiality obligations to them. And given the nature and
22 extent of those communications and the content of them, she
23 would have a conflict if she were to cross-examine either one
24 of them. So that's one of the conflicts.

25 Related to that conflict is also this question of

1 whether there's an ethical violation involved in that -- in
2 those contexts and if there is an ethical violation or an
3 accusation of an ethical violation, the concern is, as I said
4 before in speaking with the Government, the concern is that a
5 person would be motivated to defend himself or herself from
6 the accusation in a way that might keep the lawyer from asking
7 certain questions or calling certain witnesses. That's what
8 the concern is.

9 The other conflicts which I don't think there's a
10 factual basis for them but it's the same question, and I've
11 asked Curcio counsel, Ms. Haramati, to review with you and
12 advise you about all of those concerns.

13 Now, the general issue here is that whenever a
14 lawyer has a conflict of interest what's in the lawyer's best
15 interest and what's in your best interest as the client may
16 not be the same and so you have the Constitutional right, as I
17 think I advised you before, to be represented by a lawyer who
18 has no conflict. You also, within certain limitations, have a
19 right to choose your own counsel. We also have a situation
20 where you have two other lawyers and, so, that's also
21 something you can take into account.

22 So I am going to ask you a series of questions so
23 that I can be sure that, A, that you understand what the
24 conflicts are and that you are in a position to tell me
25 whether you want to waive them. So are you willing to answer

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1 those questions?

2 THE DEFENDANT: Yes, ma'am, Your Honor.

3 THE COURT: So, do you have any condition or
4 anything that would interfere with your ability to understand
5 what's happening here in court today?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Okay. Now, you are currently
8 represented by Ms. Blank Becker; is that correct?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And are you satisfied with her services
11 so far in this case?

12 THE DEFENDANT: Yes, I am.

13 THE COURT: All right. And do you intend to go
14 forward with Ms. Blank Becker as one of your lawyers?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: And she has had -- as you are aware,
17 there is certainly evidence that she has had sustained
18 communications with potential witnesses in this case. Are you
19 aware of that?

20 THE DEFENDANT: Yes, ma'am Your Honor.

21 THE COURT: As I said before, there are risks to
22 being represented by a lawyer who has those conflicts that
23 have been raised in this case. So to the extent there's an
24 attorney/client relationship, it doesn't have to be formal.
25 To the extent that Ms. Becker gave legal advice of any kind do

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1 a potential witness, that means she owes that person a duty of
2 loyalty and she might be prevented from either investigating
3 leads or introducing evidence or challenging a witness's
4 testimony and that includes Jane Doe No. 5 or calling another
5 witness, Ms. Savage, if she were to rely on information that
6 she received in a privileged communication. Do you understand
7 that?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: Now, she also may have gotten some
10 privileged information from either of those two witnesses that
11 might help your case, but she can't disclose it to you because
12 of her ethical duties and she couldn't share that information
13 with either Mr. Cannick or Mr. Farinella for the same reasons.
14 Do you understand that?

15 THE DEFENDANT: Yes, I understand, Your Honor.

16 THE COURT: She would also be prohibited from
17 cross-examining or doing a direct examination of any witness
18 with whom she had had a privileged conversation, including
19 Jane Doe No. 5 and Ms. Savage, do you understand that?

20 THE DEFENDANT: Yes, ma'am, Your Honor, I do.

21 THE COURT: Now, as I said before, she has a duty of
22 loyalty to people that she has given legal advice to
23 regardless of whether there's a formal relationship. That
24 duty continues even after the relationship ends. So she owes
25 a continuing duty of loyalty to former clients or anybody to

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1 whom she gave legal advice. There is a chance that she could
2 make decisions that, consciously or unconsciously, could be
3 influenced by how those decisions might affect the people to
4 whom she owes a continuing duty of loyalty. Do you understand
5 that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And then related to that, although, is
8 the question of becoming an unsworn witness, having gotten
9 information from witnesses. But, again, since you have three
10 lawyers, if that's a concern, one of the other lawyers can
11 take the witness, can do the examination. Do you understand?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: Now, in addition to that, there are
14 certain allegations and I think the best thing to do might be
15 just to refer --

16 I'm going to ask Ms. Cruz Melendez, I think it would
17 be ECF number 107, might contain what the concerns are; is
18 that right?

19 MS. CRUZ MELENDEZ: The June 14, 2021 letter, which
20 is -- I don't have the ECF number directly in front of me.

21 THE COURT: That is okay.

22 MS. CRUZ MELENDEZ: June 14, 2021.

23 THE COURT: And I'm just going to direct
24 Ms. Haramati to that letter and in particular to the second
25 paragraph of page two and just if you can direct Mr. Kelly to

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1 what I am a talking about.

2 MS. HARAMATI: I will do that.

3 THE COURT: And relatedly the information in the
4 paragraph following that.

5 MS. HARAMATI: I'm sorry, the paragraph following
6 relates to the unsworn witness issue. I believe the second
7 paragraph on page one, is that it?

8 MS. CRUZ MELENDEZ: So, the second paragraph
9 beginning on page one which goes into page -- the top of page
10 two, as well as the first full paragraph of page two.

11 THE COURT: You've reviewed those specific --

12 MS. HARAMATI: We have.

13 MS. CRUZ MELENDEZ: Your Honor, just one other
14 thing. With respect to the second full paragraph which is
15 technically paragraph three on page two, I just wanted to note
16 that in addition to Jane Doe No. 5, there are additional
17 witnesses or potential witnesses named starting at the end of
18 line three into line four that would also be included in
19 the -- with respect to the unsworn witness issue.

20 THE COURT: Yeah, we just said that.

21 MS. CRUZ MELENDEZ: Okay.

22 THE COURT: I think we did, didn't we?

23 MS. HARAMATI: I believe we've covered the unsworn
24 witness.

25 MS. CRUZ MELENDEZ: Thank you, Judge.

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1 THE COURT: That is all right. So, specifically
2 that second paragraph on page two, Mr. Kelly, have you
3 reviewed the contents of that paragraph is Ms. Haramati?

4 THE DEFENDANT: Yes, Your Honor, I have.

5 THE COURT: You understand what's contained in them;
6 correct?

7 THE DEFENDANT: Yes, correct.

8 THE COURT: And also in the paragraph on the
9 preceding page which I actually think we discussed the last
10 time, but I also don't think there is much of a foundation for
11 it, that also contains a separate allegation and Ms. Haramati
12 reviewed that with you not just today, but in your prior
13 meetings; correct?

14 THE DEFENDANT: Yes, correct.

15 THE COURT: And, again, the -- just the general
16 issue is that an attorney who has committed unethical conduct,
17 and I'm not saying that anybody did, but that the general
18 question is that someone who has done something unethical may
19 want to hide that conduct and an attorney who is accused of
20 unethical conduct, even if the person didn't do it, may seek
21 to dispel the impression that she did it or he did it. If the
22 person did it they may want to hide it and if the person
23 didn't do it, they don't want the accusation to come out.
24 That's basically what I am saying to you.

25 In either situation, the lawyer could make decisions

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1 that aren't in your best interest in order to protect herself
2 or himself from that information. So, again, and I think I
3 mentioned this before, a lawyer may choose not to call a
4 witness or to avoid certain kinds of questioning because of
5 the concern that it could affect the lawyer's career. Do you
6 understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And the other thing is that an attorney
9 who is accused of wrongdoing or of the -- of some of the
10 things that are contained in that letter, might not be able to
11 give you a completely independent or unbiased assessment of
12 whether you should go to trial, whether you should testify,
13 things like that. Do you understand?

14 THE DEFENDANT: Yes, I do Your Honor.

15 THE COURT: Do you have any questions about any of
16 the things that we've talked about so far?

17 THE DEFENDANT: No, I don't.

18 THE COURT: There may be, and I identified a few
19 issues here, there may be additional issues that come up.
20 Nobody can predict every possible conflict or issue that may
21 come up and if later in this case there's more information
22 that comes up or the conflicts becomes more serious, I may
23 have -- I don't know that this will happen, but it's always a
24 possibility that I may have no choice but to disqualify the
25 conflicted lawyer at that time. Do you understand?

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1 THE DEFENDANT: Yes, I do, Your Honor.

2 THE COURT: Now, I explained earlier that the Court
3 appointed a respected member of our bar, Ms. Haramati, who is
4 independent of the case and her role was to advise you of all
5 of these potential conflicts and I understand that she has met
6 with you and advised you about the concerns that are raised in
7 those submissions.

8 Have you had enough time to consult with her or do
9 you want to get any additional advice or guidance from her?
10 Don't hesitate to ask if you want it. You are not under any
11 pressure to make this decision at this moment. If you would
12 like, we can take a recess. You can consult with Ms. Haramati
13 once more about these issues and, if you want, I will give you
14 a half hour or so to talk to her to make sure you understand
15 everything about it because the next phase, just so you're
16 prepared, I really want to make sure that you understand what
17 the conflicts are, so I will be asking you specifically to
18 describe those to me, and then I am going to ask you just to
19 make sure that you understand what all your rights are in
20 connection with this.

21 So I think it's probably a really good idea to take
22 a half an hour or so, meet with Ms. Haramati and make sure
23 that you don't have any additional questions. That is what we
24 will do. We will recess for a half an hour. Before we do
25 that, I don't know if there's any other question that either

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1 Ms. Haramati or the Government wants me to put to Mr. Kelly
2 before he consults with Ms. Haramati.

3 MS. CRUZ MELENDEZ: Nothing from the Government,
4 Your Honor.

5 THE COURT: Anything else Ms. Haramati?

6 MS. HARAMATI: No, Your Honor.

7 THE COURT: Let's recess for that period of time and
8 then we will resume.

9 (Recess taken.)

10 THE COURT: All right. Let me just ask Mr. Kelly,
11 have you had enough time to consult with Ms. Haramati about
12 the issues that are involved here and about what you want to
13 do?

14 THE DEFENDANT: Yes, Your Honor, I have.

15 THE COURT: And do you think that you are in a
16 position to tell me whether or not you want to waive the
17 conflict of interest?

18 THE DEFENDANT: I believe so, Your Honor.

19 THE COURT: So what I would like to start with
20 first, and if you need some time to speak to Ms. Haramati at
21 any time during the course of this inquiry, I will give you as
22 much time as you need, but what I would first like to do is
23 just ask if you can tell me what you understand the potential
24 conflicts to be in general terms and what the risks are that
25 are associated with those potential conflicts.

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1 THE DEFENDANT: Okay, thanks, Your Honor. First of
2 all, as far as Jane Doe No. 5 and Ms. Savage, I understand
3 that as far as Ms. Blank Becker -- it's hard to pronounce, as
4 far as she's concerns if there's a conflict of interest I
5 understand that if I waive, she will be able to question but
6 she will be very limited as far as questioning them.

7 THE COURT: She may not be able to question them at
8 all.

9 THE DEFENDANT: And I understand that as well.

10 THE COURT: And, so, in terms of that portion of it,
11 of the fact that she may be limited in the things that she may
12 ask them. Do you also understand that she cannot share any
13 confidences that she learned from them with any other members
14 of your team?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: Now, aside from that representation
17 question, the appearance that perhaps she provided legal
18 advice to them, there's a separate question in connection with
19 that; her contact with them having to do with potential
20 ethical violations and whether or not they were committed is
21 not the question. The question is when a person is accused of
22 that, when a lawyer is accused of that, it might make the
23 lawyer make choices which are not in your best interest. Do
24 you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Can you explain it back to me and if you
2 want to consult with Ms. Haramati, just let me know.

3 THE DEFENDANT: Just give me one second.

4 THE COURT: Sure.

5 (Defendant and counsel confer.)

6 THE DEFENDANT: Sorry.

7 THE COURT: That is okay.

8 THE DEFENDANT: I understand that if Ms. Blank
9 Becker talked to any clients that were represented by another
10 attorney, that she could try to cover that up to make herself
11 look good instead of focusing and paying attention on what she
12 should be doing for me, basically, in my trial. I understand
13 that.

14 THE COURT: And then there were a couple of other
15 matters that we won't refer to specifically and just for ease
16 of reference, they're the items that Ms. Haramati showed you
17 in that letter. Do you recall what those were?

18 THE DEFENDANT: Yes, ma'am, I do.

19 THE COURT: And in general terms, what is your
20 understanding about the reason why that conflict or potential
21 conflict could pose a difficulty for you?

22 THE DEFENDANT: Well, I think for one, they're
23 rumors and that's all they are to me.

24 THE COURT: Right, but do you understand the risk
25 that even if something isn't true a person could take steps to

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1 make sure the rumor didn't get out, let's say that. Do you
2 understand that?

3 THE DEFENDANT: I understand that, Your Honor.

4 THE COURT: And that's related to what we just
5 talked about with the ethical concerns and you gave a pretty
6 good description of what the concern is. Do you understand
7 that this concern is pretty much the same concern?

8 THE DEFENDANT: Yes, ma'am, I do.

9 THE COURT: The final related question to the
10 contact with the witnesses, although this is ameliorated by
11 the presence of other lawyers, is the extent to which having
12 learned things from those witnesses, even putting aside the
13 question of giving legal advice, a lawyer could put herself in
14 the position of being an unsworn witness. That's the third
15 related concern. Do you understand that one? Let me have
16 Ms. Haramati explain it to you once more and then I will give
17 it a shot, too.

18 MS. HARAMATI: Just one moment, Your Honor.

19 THE COURT: Sure.

20 (Defendant and counsel confer.)

21 MS. HARAMATI: I believe we're ready.

22 THE COURT: Okay. So what do you understand this
23 potential conflict to mean?

24 THE DEFENDANT: Your Honor, when the attorney was
25 explaining it to me it sounds perfect and I totally get it. I

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1 just don't know how to repeat everything she just said.

2 THE COURT: Let me do it this way, and by the way
3 these are not easy concepts for anyone, so I can understand
4 that, but let me just first make sure you do understand what
5 counsel explained to you; correct?

6 THE DEFENDANT: Yes; correct.

7 THE COURT: And the risk is, and it's a little bit
8 subtle, but the risk is that if a lawyer has a conversation
9 with a witness and the witness testifies in a different way at
10 trial, the lawyer can certainly question the person about it,
11 but the lawyer can't say that didn't happen, this is what you
12 really said, because the lawyer is not a witness. The lawyer
13 is a lawyer.

14 How did I do, Ms. Haramati?

15 MS. BECKER: That's precisely what Mr. Kelly and I
16 discussed.

17 THE COURT: So that's the reason. The lawyer can't
18 be a witness because the lawyer is a lawyer. Is that clear to
19 you?

20 THE DEFENDANT: Very clear, Your Honor.

21 THE COURT: Okay. So I also want to make sure that
22 you understand and I think you do, you have the right to
23 object to having Ms. Becker represent you because of these
24 issues. Do you understand?

25 THE DEFENDANT: Yes, ma'am, Your Honor.

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1 THE COURT: Okay. And after speaking with
2 Ms. Haramati and hearing what I have explained to you and
3 based on the advice that you have gotten from Ms. Haramati, do
4 you still want to continue with Ms. Becker as your lawyer?

5 THE DEFENDANT: Yes, ma'am, Your Honor, I do.

6 THE COURT: And do you understand that by choosing
7 to continue with her you are giving up your right to be
8 represented by a lawyer who does not have a conflict of
9 interest, at least -- you have two lawyers who don't have a
10 conflict of interest, but at least insofar as she is
11 concerned, you are giving up the right to have a third lawyer
12 that doesn't have a conflict. Do you understand?

13 THE DEFENDANT: That part I don't.

14 THE COURT: You have two lawyers who as far as I
15 know are not conflicted, you've got Mr. Cannick and
16 Mr. Farinella. There is no allegation that anybody is
17 conflicted. Ms. Becker is not your only lawyer, but I want to
18 be sure that you are giving up the right to have her represent
19 you without a conflict of interest. Do you understand?

20 PROSPECTIVE JUROR: Yes, I do, Your Honor.

21 THE COURT: Okay. And that means that if you were
22 to be convicted at a trial, you couldn't later claim that your
23 lawyer, Ms. Becker, wasn't an effective lawyer because she had
24 these conflicts or potential conflicts. Do you understand?

25 THE DEFENDANT: Yes, I do, Your Honor.

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1 THE COURT: Is there anything else that you need to
2 have explained or that you need to consult with Ms. Haramati
3 about?

4 THE DEFENDANT: No, no.

5 THE COURT: Any other questions that the Government
6 wants me to put to Mr. Kelly?

7 MS. CRUZ MELENDEZ: Nothing, Your Honor.

8 THE COURT: Okay. I think, based on the record,
9 that we have established that Mr. Kelly is fully competent and
10 capable of making an informed decision, that he has been
11 advised by respected counsel, Ms. Haramati and that his waiver
12 of these potential conflicts or conflicts is knowing and
13 intelligent and so I accept the waiver and at this point, I
14 think it's fine to excuse Mr. Greenberg and Mr. Leonard who I
15 think are on the phone; is that right?

16 MR. GREENBERG: Yes, Your Honor.

17 MR. LEONARD: Yes, Judge.

18 THE COURT: So you are excused from representation
19 in this case.

20 And, Ms. Haramati, you have the thanks and respect
21 of the Court for your efforts in this regard. I greatly
22 appreciate it and I don't think we need to have Ms. Haramati
23 spend any more time with us here, unless she wants to, okay.

24 MS. BECKER: Thank you.

25 THE COURT: Thank you so much.

1 I do want to address a couple of additional issues.
2 I received Mr. Cannick's letter regarding some sticking points
3 at MDC and before we began this proceeding and I'm sure the
4 Government has something to say about it, but I did speak with
5 Peter Lee, who gave me some answers to those particular
6 questions but I have a second solution to this problem. So I
7 am just going to list what I have learned from Mr. Lee and
8 just bearing in mind that these are, I'm sure you are well
9 aware, that there are certain restrictions about what can be
10 brought into a facility, but nonetheless.

11 So let's just start in order; the issue of not being
12 able to bring in the binders. I am advised that you can bring
13 in Redwelds but you cannot just bring in a binder with metal
14 and you can bring in folders. The issue with regard to pens
15 and the like, you can bring in pens and pencils and sticky
16 notes, but they can't -- no highlighters or markers.

17 Now, the issue with the laptops, you are able to
18 bring in multiple laptops, hard drives and there are computers
19 in the visiting room to which the hard drives can be
20 connected. For security reasons, they ordinarily don't allow
21 chargers and this apparently has been the policy in the MDC.
22 But hard drives can be brought in.

23 Now, just the last thing, and I'm not quite finished
24 with this because I have another suggestion for you, but
25 there's this question of diabetes. Has Mr. Kelly been

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1 diagnosed?

2 MR. CANNICK: Yes, Your Honor.

3 THE COURT: Is he on medication, insulin? I know he
4 was diagnosed pre-diabetic. Because of COVID, he can't bring
5 food into the visiting room, but he can come and go to get
6 whatever nourishment he needs, but I also just -- it's not
7 something that was brought to my attention in terms of an
8 actual diagnosis. So if there's a medical order --

9 MR. CANNICK: Your Honor, we will -- just to let you
10 know, Your Honor, when he showed symptoms the other day of
11 experiencing an episode, he eventually was taken back
12 upstairs.

13 THE COURT: Okay.

14 MR. CANNICK: And that took an hour plus away. I
15 thought they were just running him upstairs and getting a
16 candy bar and come back downstairs, but that's not the case.
17 Suffice it to say, we're trying to do the best we can with
18 what we have and we will continue.

19 THE COURT: The third option is we can also make
20 arrangements to have him produced here three days a week.
21 Now, that has attendant difficulties for Mr. Kelly because
22 that requires him to get up early. There are also
23 restrictions when you -- I'm sure you are aware. There are
24 things that you can't do.

25 MR. CANNICK: Right.

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1 THE COURT: After this proceeding is over, we will
2 give you the contact information to make that happen if that's
3 what you want. The only thing is you can't do it on a Friday.

4 MR. CANNICK: Very well. May I have a second?

5 THE COURT: Sure.

6 (Pause in proceedings.)

7 MR. CANNICK: Thank you, Your Honor.

8 THE COURT: And that may be something that you don't
9 want to do, which I fully understand, but we will see if we
10 can get the -- if that's something that you want to take
11 advantage of.

12 MR. CANNICK: I will discuss it with the others. I
13 don't know if there will be face-to-face meetings because if
14 you come here there's a screen, there's a mesh. We want to
15 show a computer. I don't think there's any reception in the
16 Marshal's pen and there's a mesh screen where we wouldn't be
17 able to exchange documents.

18 THE COURT: There will be no internet in either
19 place. That's a security issue in the facility and also
20 downstairs. At least in terms of a hard drive or a thumb
21 drive, and I'm acting like I know how these things work, but
22 you are able to bring those in. So, we can -- you can speak
23 with -- let me make sure if it's all right if we do this.

24 (Pause in proceedings.)

25 THE COURT: You can speak with our courtroom deputy

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1 about the mechanics of that other method. Okay?

2 MR. CANNICK: Okay, thank you.

3 THE COURT: Now, I just want to also remind the
4 parties of a couple of things. Our final pretrial conference
5 is August 2nd.

6 MR. CANNICK: Your Honor, is that date flexible?

7 THE COURT: Yes.

8 MR. CANNICK: Can we consider August 6th or 5th.

9 THE COURT: That's not a problem, whichever date you
10 want you.

11 MR. CANNICK: The 6th around 11.

12 THE COURT: Sure. I don't anticipate it's going to
13 take very long, but August 6th at 11. Now, the Government has
14 submitted a list of people and organizations and places that
15 will be included in the questionnaire. So jurors will know
16 whether they know any of the organizations or things like
17 that. So the Government submitted that list. I guess it
18 might need to be updated?

19 MS. CRUZ MELENDEZ: It's possible, Your Honor.
20 There might be -- as we noted in our letter there might be a
21 few names that we would add to the list.

22 THE COURT: I didn't get a separate list from the
23 defense, but I'm assuming -- take a look at that list, the
24 deadline has passed, but I assume that was because whomever
25 you were going to call or whoever you were concerned about was

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1 on that list.

2 MR. CANNICK: That's pretty much --

3 THE COURT: Double check that because the jurors are
4 coming in -- the questionnaires are going to be distributed
5 the week after next.

6 MR. CANNICK: There are two names that we would like
7 to add. They are they're not witnesses but individuals who
8 will be part of the defense team.

9 THE COURT: That was going to be my next area. We
10 also will need a list of the people that are going to be in
11 the courtroom. I think everybody is vaccinated, but I don't
12 know if the paralegals --

13 MR. CANNICK: One is an attorney filing an
14 appearance. Don't get upset, we won't be asking go for
15 additional time. He will be here and ready to go. That will
16 be Calvin Scholar.

17 THE COURT: So he's going to file a notice of
18 appearance.

19 MR. CANNICK: Yes. And I don't know if the
20 Government needs to add his name to whatever list that is.

21 THE COURT: I will let you all work that out. The
22 bottom line is we want to make sure that the jurors, that we
23 don't have a problem.

24 I do want to make sure that I'm giving you the right
25 information about what information that we will need about the

1 people who will be here, but I think that we can probably do
2 that separately. I don't want to say anything that doesn't
3 apply.

4 Then motions in limine are due by July 19th and I
5 know we've received one from the Government and any opposition
6 is July 26th. I will give you a preview. I believe
7 Mr. Cannick is the only one that I have had the pleasure of
8 trying a case with, but just some sort of basic things; this
9 is a fairly low-drama courtroom and so I would like to keep it
10 that way. The other issues generally is I'm not a huge fan of
11 sidebar conferences. I'm not saying an absolute no, but I
12 generally find them to be unnecessary and distracting to the
13 jury. So just a -- it's not something that I look forward to
14 and so I'm going to -- I may not always grant your request for
15 a sidebar conference.

16 I don't permit speaking objections and, so, just say
17 objection and sometimes you will win and sometimes you won't
18 but usually we just move on from those without extended
19 argument. Of course if there's something that you're just
20 desperate to tell me, we can deal with that, but I think most
21 of the time we can just move on. I usually understand what
22 your objection is, but there doesn't need to be extended
23 conversation about it.

24 I will give you some more of those details once we
25 have our final pretrial conference on August the 6th at 11

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1 o'clock. And I just want to know if there's anything else
2 that either side needs to put on the record. Let me start
3 with the Government.

4 MS. CRUZ MELENDEZ: Nothing further from the
5 Government.

6 THE COURT: How about the defense?

7 MR. CANNICK: Nothing currently, Your Honor.

8 THE COURT: All right. So, Mr. Cannick or whomever,
9 if you want to find out how to go about if you want him
10 brought here, you don't have to, but if you want that, Donna
11 can help you with that.

12 All right, everyone, thank you so much.

13 (Proceedings paused.)

14 MS. SHIHATA: Your Honor, I'm very sorry to get you
15 back in the courtroom, but I thought we could resolve this
16 issue while everyone is here.

17 THE COURT: That's fine.

18 MS. SHIHATA: So if I may explain, Your Honor. On
19 July 13th the Government obtained a search warrant for
20 Mr. Kelly's DNA that was signed by the honorable James Cho, a
21 Magistrate Judge in this court. The warrant indicates that we
22 do this at a mutually convenient time and alert defense
23 counsel. We indicated to defense counsel by e-mail yesterday
24 that we proposed doing this while everyone was here in court
25 so as not to inconvenience everyone again, particularly the

1 issues they have had in meeting with their client and we
2 provided a copy of the warrant. No one objected to that.

3 I made sure they got a copy of the warrant again
4 when I spoke to them before court this morning. I got an
5 inquiry saying can we get a copy of the affidavit. I said it
6 is currently under seal. We will be filing for a limited
7 unsealing order and when we do, we of course will provide it
8 to you. We were all set and we have our law enforcement
9 officers here to do the swabbing and they just told us that
10 they refuse unless we show them the affidavit. I don't think
11 that is the proper procedure. They're entitled to challenge
12 it after the fact.

13 THE COURT: I think that's right. You know, I
14 haven't -- I don't -- I'm positive that's not the procedure so
15 there's a warrant. If the warrant authorizes the taking of
16 the DNA, if the warrant -- you can request a hearing after the
17 taking of the DNA on the basis of the Judge's determination,
18 but there is no cause to see the affidavit now.

19 I'm not saying that you have to do this -- when is
20 that going to be available? When are you going to make the
21 unsealing order?

22 MS. SHIHATA: I was going to propose, Judge, to make
23 it to you right now, a limited unsealing order for the
24 purposes of providing the affidavit to defense counsel and
25 assuming Your Honor grants it I will do it as soon as I get

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1 back to my office. I will e-mail them the affidavit.

2 THE COURT: I mean, that's the way to go. And if
3 there is something in the affidavit that makes you think you
4 want to challenge the basis for the warrant, you can do it,
5 but I think it makes the most sense. I mean, you don't want
6 to interrupt your time consulting with Mr. Kelly. So I think
7 if everybody is ready you should go ahead and do it.

8 MS. SHIHATA: Thank you, Your Honor.

9 THE COURT: Anything from your side?

10 MR. CANNICK: We're good. Thank you, Your Honor.
11 We would consent to the Government's application regarding the
12 unsealing order.

13 THE COURT: It's a limited -- shall I sign it now?

14 MS. SHIHATA: I will send Donna a copy but it would
15 be a limited unsealing order just for these purposes.

16 THE COURT: Okay. Thank you, everyone.

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18 (Matter adjourned.)

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